O. Probation of Offenders

1945.

File No. of

45

A **BRANCH**

Subject: Opinions under the Bombay Probation of Offenders Act, 1938.

(P 8/F)

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C O N T E N T S.

Legal Department File No. 0 Probation of offenders/54
45.

Sr. No.	Compilation No.	Subject.	Pages.
		Opinionsm under the Bombay Probation of offenders Act, 1938.	
1)	O.No. 8899/29-11-45.	Questions ("Whether the Act is applicable to a case in which an offender is tried in Dharwar for an offence committed in the mofussil area of Dharwar Taluka (2) Whether a touring Magistrate can try a case at places outside the Dharwar Tour for an offence committed within Dharwar Tour, (3) Whether under the proviso to sub-sec.(1) of sec. 5, mofussil offenders brought to trial before the city Mag. Dharwar, cannot be given the benefit of the Act as they are usually unable to produce a surety resident within the Dharwar Tour, (4), Whether the benefit of sec.562 of the cr. P.C. 1898, is denied to the mofussil offenders to whom the benefits of the Act are made available & (5) whether the words "Within the local limits of in proviso to sec.5(1) limits the applicability of the Act and if so amendment of the proviso is necessary.	

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Attention is invited to Paras. III and IV of the minutes of the first meeting of the Probation Committee of Dharwar District held on 14-7-1945. The questions raised in Paras. III and IV are these:-

(1) Whether the Bombay Probation of Offenders Act, 1938, is applicable to a case in which an offender is tried in Dharwar for an offence committed in the mofussil area of Dharwar taluka;

(2) Whether a touring magistrate can try a case at places outside the Dharwar Town for an offence committed within Dharwar Town;

(3) Whether under the proviso to sub-section (1) of section 5, mofussil offenders brought to trial before the City Magistrate Dharwar, cannot be given the benefit of the Act as they are usually unable to produce a surety resident within the Dharwar Town;

(4) Whether the benefit of section 562 of the Code of Criminal Procedure, 1898, is denied to the mofussil offenders to whom the benefits of the Bom. P.O. Act are not made available.

(5) Whether the words "within the local limits of its jurisdiction" in proviso to section 5(1) limit the applicability of the Act and if so, amendment of the proviso is necessary.

2. Anent the first question, the Public Prosecutor appears to have expressed the view that the applicability of the Act was <u>connected to the place where the Court held the trial</u> and hence in these circumstances the Act would be aplicable". This view is not correct. Under section 1(3) of the Bom. Probation of Offenders

Office of the R.L.A.

Para. 3 of H.D. office note at page 7 ante.-

The view taken by H.D. is correct. The local limits of the court's jurisdiction contemplated in the proviso to section 5(1) of the Bombay Probation of Offenders Act, 1938, may or may not be co-extensive with the local area to which the Act is applied. Consequently it is not necessary that the offender or one of his sureties should have a fixed place of abode or regular occupation etc. within the local area to which the Act is applied.

2. Para. 4 of H.D. office note at page 7 ante.- The view taken by H.D. is correct. Section 14 expressly excludes the application of section 562, Criminal Procedure Code in the area in which the Probation of Offenders Act is in force. If By virtue of the proviso to section 5(1) it is not possible for a Court to pass a probation order under the section then the offender on conviction will have to be sentenced in accordance with the provisions of the Criminal Procedure Code and it would be hard on him, if he be a first offender, to be denied the benefit of section 562. If the administrative department considers that in such case the benefit of section 562 should be admissible, it would be necessary to amend section 14 of the Probation of Offenders Act.

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Remembrancer of Legal Affairs.

U.P. to H.D., No. 8899, dated the 29th November 1945.

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